

M. PATRICK MAGUIRE, P.C.

ATTORNEY AT LAW

May 7, 2019

Hon. Deana Williamson, Clerk
Court of Criminal Appeals of Texas
P.O. Box 12308
Austin, Texas 78711FILED
COURT OF CRIMINAL APPEALS
5/10/2019
DEANA WILLIAMSON, CLERK**Re: No. PD-0867-18, Troy Allen Timmins v. State of Texas, Court of Criminal Appeals of Texas**

Dear Ms. Williamson:

Appellant supplements his oral argument and briefs with the following additional authority:

1. *Harrell v. State*, 743 S.W.2d 229 (Tex. Crim. App. 1987). In *Harrell*, the defendant was transferred from jail to the V.A. Hospital for medical treatment. The defendant left the hospital without authorization. In determining that the defendant was still in "custody" for purposes of the escape statute, the Court of Criminal Appeals held that the defendant had not been admitted to bail and Appellant's case had not been resolved. Therefore, the Court held that the defendant was still in custody even though he had been released from jail.

Appellant was remanded to jail but told to report later that day. Appellant's case was not resolved. The trial court did not set new bail after initially revoking Appellant's bail. Therefore, Appellant was in "custody" and could not be charged under the Bail Jumping/Failure to Appear statute, because this statute requires that a defendant be released from custody. Appellant was under restraint pursuant to a court order, which is the plain definition of "custody" as set out in Section 38.01 of the Penal Code.
2. *Ex parte Marascio*, 471 S.W.3d 832, 848 (Tex. Crim. App. 2015). The Legislature clearly intended that the gravamen of the offense of Bail Jumping/Failure to Appear include an element of knowing or intentional disobedience of those terms, i.e., an emphasis on the terms of the bond itself. *Figueredo v. State*, Nos. 07-17-00334-CR, 07-17-00335-CR, 2019 Tex. App. LEXIS 2353 (Tex. App.—Amarillo Mar. 26, 2019).
3. *Euziere v. State*, 648 S.W.2d 700, 702 (Tex. Crim. App. 1983). The requisite culpable mental state for Bail Jumping/Failure to Appear may be proven by merely presenting a bond requiring a defendant to appear instantaneously before a magistrate or judge and proof that the defendant failed to do so. However, citing *Euziere*, other appellate courts have held notice to be insufficient where the bond fails to name the court in which the defendant is to appear. See, e.g., *Fish v. State*, 734 S.W.2d 741, 743 (Tex. App.—Dallas 1987, no pet.).

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Letter of Additional Authorities

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State's Exhibit 1 is not a bond containing terms of release. Rather, it is a "Notice of Hearing Sheet" filled out by the district clerk after Appellant's bail was revoked. In the comment section of the form, it does not order Appellant to the Bandera County Jail. It simply says "Bond Revoked – Turn in on or before 3:00 P.M. to Sheriff's Office Today." The form does not state the address of either the Bandera County Jail or the "Sheriff's Office." The form states that: "Bondsman are responsible for the presence of the defendant *in court for all settings*. Failure of the defendant to appear may result in the forfeiture of the appearance bond and a warrant being issued for the defendant." RR 9, State's Exhibit 1 (emphasis added). The form has checkboxes to identify who has been provided notice. While the defense attorney's name is on the form, the box is not checked next to the attorney's name. The only checkboxes marked suggest that it was hand-delivered to the case file. The checkboxes on the form do not indicate that notice was provided to Appellant. This form also contains the handwritten notation, "P.R. Bond." However, the trial court did not set a new bond after revoking Appellant's bail. Furthermore, the form contains neither the Appellant's signature nor the signature of his attorney. The terms of the trial court's verbal orders vary from the terms of the written notice. This raises fundamental questions about whether the State proved the requisite culpable mental state.

Sincerely yours,

M. PATRICK MAGUIRE, P.C.

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cc: Scott Monroe
David A. Schulman
Ryan Kellus Turner
Stacey M. Soule
Molly Knowles